

Judge Burgess

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,
Plaintiff,

v.

REAL PROPERTY LOCATED AT 2300-158th
AVENUE, LAKEBAY, WASHINGTON, its
Buildings, Improvements, Appurtenances,
Fixtures, Attachments and Easements,

Defendants.

NO. C03-5564FDB

CONSENT JUDGMENT FOR
FORFEITURE OF \$80,000 IN LIEU
OF DEFENDANT REAL
PROPERTY

COMES NOW the United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Peter O. Mueller, Assistant United States Attorney for said District, Claimant Richard Lawrence Dent, by his attorney Barry L. Flegenheimer, and Claimant Larry E. Smith, and enter into this Consent Judgment for Forfeiture upon the terms and conditions set forth below.

Plaintiff, United States of America, filed its Complaint for Forfeiture against the defendant real property on October 20, 2003 based on a commercial marijuana grow

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(206) 553-7970

operation allegedly discovered on the property on January 7, 2002. On December 11, 2003, Plaintiff filed its Amended Complaint which repeated the original forfeiture allegations against the defendant real property, and which added allegations concerning a second marijuana grow operation discovered on the property on October 21, 2003. In its Amended Complaint, the United States alleged that the defendant real property was used to commit or facilitate the commission of felony drug offenses, that is, the cultivation, processing and distribution of marijuana, in violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)B) and is therefore subject to forfeiture to the United States pursuant to Title 21, United States Code, Section 881(a)(7).

On October 22, 2003 a Lis Pendens against the defendant real property was filed with the Department of Records for Pierce County, Washington. On January 27, 2004, notice of the Complaint was given by the United States Marshals Service posting a copy of the Complaint, Notice of Action, and Lis Pendens at the defendant real property. On January 27, 2004, the United States Marshals Service posted a copy of the Amended Complaint and Notice of Action at the defendant real property. The defendant real property, located at 2300-158th Avenue, Lakebay, Washington, is more particularly identified as follows:

Parcel A

Lot 1 of Pierce County Large Lot Division
8306300434, according to Plat recorded June 30, 1983
in Pierce County, Washington.

Parcel B

A private Road and Utility Easement as delineated on
Pierce County Large Lot Division 8306300434,
according to Plat recorded June 30, 1983 in Pierce
County, Washington.

TAX PARCEL NUMBER: R0020122017

On or about November 26, 2003, copies of the Complaint for Forfeiture of the defendant real property, Notice of Action In Rem, and Lis Pendens, were served on possible claimant Richard Lawrence Dent. The return of service has been filed with the

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1 Court.

2 On or about December 11, 2003, copies of the Amended Complaint for Forfeiture
3 of the defendant real property, Notice of Action In Rem, and Lis Pendens, were served
4 on possible claimant Richard Lawrence Dent, through counsel Barry L. Flegenheimer.
5 An Acknowledgment of Service from Mr. Flegenheimer on behalf of Mr. Dent has been
6 filed with the Court.

7 On or about December 12, 2003 a verified claim of ownership of the defendant
8 real property was filed by Claimant Richard Lawrence Dent.

9 On or about January 2, 2004, Claimant Richard Lawrence Dent filed an answer to
10 the Amended Complaint in which he denied the allegations of the United States.

11 On April 15, 2004, copies of the Amended Complaint for Forfeiture of the
12 defendant real property, Notice of Action In Rem, and Lis Pendens, were served on
13 possible claimant Larry E. Smith. The return of service has been filed with the Court.

14 On or about April 20, 2004 a verified statement of an interest in the defendant real
15 property as real estate contract seller, was filed by Claimant Larry E. Smith. On April 24,
16 2004, and amended Statement of Interest was filed by Claimant Larry E. Smith.

17 On or about May 8, 2004, Claimant Larry E. Smith filed an answer to the
18 Amended Complaint in which he denied the allegations of the United States.

19 On or about August 26, 2004, copies of the Amended Complaint for Forfeiture of
20 the defendant real property, Notice of Action In Rem, and Lis Pendens, were served on
21 possible claimant Leona M. Smith. The return of service has been filed with the Court.
22 No claim of interest in the defendant property has been filed by Leona M. Smith and the
23 time permitted for doing so has expired.

24 Notice of the forfeiture action as alleged in the Amended Complaint was published
25 in The Daily Journal of Commerce on November 28, December 5, and December 12,
26 2003, and in the Tacoma Daily Index, a newspaper of local circulation with relation to
27 the defendant real property, on December 1, December 8, and December 15, 2003, in
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1 order to give all persons, including any unknown claimants, the opportunity to appear and
2 be heard. All interested persons were advised to file their claims pursuant to
3 Supplemental Rule C(6) of the Federal Rules of Civil Procedure with the Clerk of the
4 Court within ten (30) days after the date of the publication and to serve their Answers to
5 the Complaint within twenty (20) days after the filing of a claim. On April 19, 2004,
6 the United States and Larry E. Smith and his spouse, Phyllis Smith filed an Expedited
7 Settlement agreement with the Court in which the United States agreed to recognize the
8 claim of Larry E. Smith, by paying the outstanding lien interest of Larry E. and Phyllis
9 Smith in the defendant property upon the entry of a judgment forfeiting the defendant
10 property to the United States.

11 The United States and the remaining claimant, Richard L. Dent then reached an
12 agreement to settle this case whereby Richard L. Dent would make a cash payment to the
13 United States in the amount of \$75,000, which amount would have been forfeited to the
14 United States in lieu of the defendant real property. This attempted settlement failed
15 when claimant Dent was unable to raise the \$75,000 necessary to perform his obligation
16 under the proposed settlement agreement .

17 On January 28, 2005, the parties reached a new agreement which provided for the
18 sale of the defendant real property and the division of the proceeds of the sale. On
19 January 28, 2005, the Court entered its Order authorizing claimant Dent to market and
20 sell the property on an interlocutory basis, with the net proceeds of the sale to be
21 disbursed first, paying closing costs, escrow fees, recording fees, any real property taxes
22 and other county taxes due and owing, and any real estate commissions incurred in the
23 marketing of the property. Second, to pay all amounts due to Larry E. and Phyllis Smith
24 in fulfillment of their lien interest in the defendant property, specifically, all unpaid
25 principal, interest and late penalties due to the Smiths under that certain Real Estate
26 Contract Recorded in Pierce County, Washington on June 28, 1994, recording no.
27 9406280692. Third, to pay the United States the remaining net proceeds of sale or
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1 \$80,000.00, whichever is less, to be forfeited in lieu of the defendant property. Fourth, in
2 the event the remaining net proceeds exceeded \$80,000.00, to pay all remaining proceeds
3 to Claimant Dent, through his attorney Barry L. Flegenheimer.

4 On May 23, 2005 the United States Marshals Service received a cashier's check
5 from First America Title Insurance Company, in the amount of \$80,000.00, representing
6 the amount to be forfeited in lieu of the defendant property. The claim of Larry E. Smith
7 has been recognized and disposed of in accordance with the terms of the Order
8 Authorizing Interlocutory Sale of the Defendant Real Property and Approving Settlement
9 Agreement, filed on January 28, 2005. All amounts owing to Claimant Larry E. Smith
10 were paid through the escrow agent at the time of closing of the sale of the property
11 pursuant to the Court's Order. As agreed upon, the United States upon receipt of said
12 cashier's check as specified above, filed a Release of Lis Pendens as to the defendant real
13 property with the Recorder's Office, Pierce County, Washington.

14 Claimant Richard Lawrence Dent hereby further agrees to fully and finally release
15 and forever discharge the United States and its agencies, agents, employees and officers,
16 the West Sound Narcotics Enforcement Team, the Drug Enforcement Administration
17 Task Force, and their officers and employees, and any other state or local law
18 enforcement agents or officers involved in the investigation relating to this case, from any
19 and all claims, liens, demands, obligations, actions, causes of actions, indemnifications,
20 damages, liabilities, losses, costs and expenses, of any nature whatsoever, known or
21 unknown, past, present or future, that Richard Lawrence Dent, his heirs, successors, or
22 assigns may have had, now have, or may hereafter have, arising out of the searches of the
23 defendant real property by officers and agents of the West Sound Narcotics Enforcement
24 Team on January 7, 2002 and October 21, 2003, the seizure, handling, and disposition of
25 various items of personal property, the related investigation leading to and following such
26 actions, and the subsequent forfeiture proceedings, including any claims for interest and
27 attorney's fees.

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1 It is expressly acknowledged by the parties that the \$80,000.00 received by the
2 United States Marshal from the proceeds of sale of the defendant property is to be
3 forfeited to the United States in lieu of any forfeiture of the defendant real property,
4 based upon evidence derived from the searches of the defendant real property on January
5 7, 2002 and October 21, 2003.

6 The United States, Richard Lawrence Dent, and Larry E. Smith now stipulate and
7 agree to the entry of this Consent Judgment for Forfeiture without further adjudication of
8 any issue of fact or law. This Consent Judgment for Forfeiture fully and finally resolves
9 all issues in this action. Accordingly, IT IS HEREBY ORDERED, ADJUDGED AND
10 DECREED as follows:

11 1. This Court has jurisdiction of this matter and over the property and the parties
12 pursuant to 28 U.S.C. §§ 1345, 1355, 1356 and 21 U.S.C. §§ 881(a)(4) and 881(a)(7)
13 and venue pursuant to 28 U.S.C. §§ 1355 and 1395.

14 2. Claimant Richard Lawrence Dent has paid the United States in the manner
15 specified above, the total sum of \$80,000.00. The United States Marshals Service shall
16 be reimbursed for its costs relating to the processing of this forfeiture action from this
17 \$80,000.00 payment. The remainder of this payment is condemned and forfeited to the
18 United States to be disposed of in accordance with law.

19 3. The lien interest of claimant Larry E. Smith in the defendant property has been
20 extinguished by the payments made to him from the proceeds of the sale of the property.

21 4. Except as provided in paragraph 2 above with respect to costs of the United States
22 Marshals Service, each party is to bear its own costs and attorney's fees.

23 5. This Consent Judgment represents a full settlement and satisfaction of all claims to
24 the defendant real property and of any causes of action arising out of the searches of the
25 defendant real property on January 7, 2002 and October 21, 2003.

26 6. The Clerk of the Court is directed to mail a copy of this Consent Judgment for
27 Forfeiture to the attorneys for each party of record, to deliver a copy to the United States
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1 Marshals Service, and to send three additional, certified copies to the United States Marshals
2 Service, Seattle, Washington.

3 DATED this 12th day of July 2005

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6 FRANKLIN D. BURGESS
7 UNITED STATES DISTRICT JUDGE
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CONSENT JUDGMENT FOR FORFEITURE
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CONSENT

We submit this Consent Judgment for Forfeiture to the Court for signature, having agreed to its terms and consented to the entry of this Consent Judgment in full satisfaction of this case and further, we waive any right of appeal.

JOHN McKAY
United States Attorney

Dated 7/5/05

/s/ Peter O. Mueller
PETER O. MUELLER
Assistant United States Attorney

Dated 6/23/05

/s/ Barry L. Flegenheimer
BARRY L. FLEGENHEIMER
Attorney for Claimant

Dated 6/21/05

/s/ Richard L. Dent
RICHARD LAWRENCE DENT
Claimant

Dated 6/28/05

/s/ Larry E. Smith
LARRY E. SMITH
Claimant

Dated 6/28/05

/s/ Phyllis Smith
PHYLLIS SMITH,
Spouse of Claimant Larry E. Smith